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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

SMARTWORLD TECHNOLOGIES, LLC, et al.,

Debtors.

Bankr. Case Nos. 00-41645
through 00-41647(JMP)

RIKER, DANZIG, SCHERER, HYLAND &
PERRETTI, LLP,

Appellant/Cross-Appellee,

v.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS,

Appellee/Cross-Appellant.

Case No. 07-CV-03603

**STATEMENT OF ISSUES ON APPEAL AND
DESIGNATION OF ITEMS FOR THE RECORD**

The Official Committee of Unsecured Creditors (the “Committee”) in the above-captioned cases, by and through its attorneys, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully submits the following Statement of Issues and Designation of Items for the Record with respect to its appeal from the judgment of the United States District Court, entered on March 25, 2008 following an opinion of the Honorable Miriam Cedarbaum dated March 19,

2008 (the “Appealed Opinion”) reversing the fee award of the United States Bankruptcy Court and remanding the fee award to the United States Bankruptcy Court for entry of a further judgment, in the amount of \$2,215,987.45, comprising of \$73,901.18 in expenses and a fee award of \$2,142,006.27 to Riker, Danzig, Scherer, Hyland & Perretti, LLP (“Riker Danzig” or “Appellee”).

STATEMENT OF ISSUES ON APPEAL

1. Did the District Court err in reversing the Bankruptcy Court’s findings that, to the extent Appellee’s retention was pursuant to Section 328 of the Bankruptcy Code, subsequent events not capable of being anticipated at the time of the fixing of such terms and conditions of retention proved the terms of retention to be improvident?

2. Did the Bankruptcy Court and the District Court err in concluding that Appellee’s retention was clearly and unambiguously intended to be under Section 328 of the Bankruptcy Code with no further review by the Bankruptcy Court under Sections 330 and 331 of the Bankruptcy Code?

3. Did the Bankruptcy Court and the District Court err in awarding fees to the Appellee without considering all of the terms of Appellee’s retention which included the condition that the Appellee had to be successful in the litigation with Juno Online Services, Inc. before it would be entitled to any fee?

4. Did the District Court err in not remanding the matter back to the Bankruptcy Court for a further hearing to consider the fee award in light of the failure of the Bankruptcy Court to consider whether Appellee had demonstrated success in the litigation against Juno Online, Inc.?

5. Did the District Court err in awarding Appellee \$2,215,987.45 in fees when the money to pay these fees came from a settlement obtained by the Appellant over Appellee's objections?

6. Did the District Court and Bankruptcy Court err in not considering whether Appellee had been successful in the litigation with Juno Online Services, Inc. as a condition to awarding Appellee compensation?

7. Did the District Court err in concluding that a retention under Section 328 of the Bankruptcy Code precludes a review of the fees under Sections 330 and 331 of the Bankruptcy Code?

The Committee submits the following designation of items from the District Court docket to be included in the record of this appeal:

- (a) Notice of Appeal (Docket No. 1);
- (b) Designation of Record on Appeal and Statement of Issues to be Presented Regarding Order Allowing Final Compensation and Reimbursement of Expenses and Disbursements dated March 23, 2007, and entered on March 28, 2007 (Docket No. 2);
- (c) Notice of Bankruptcy Cross-Appeal (Docket No. 3);
- (d) Statement of Issues on Appeal and Designation of Items For Record (Docket No. 4);
- (e) Appellant's Brief (Docket No. 6);
- (f) Appellee's Brief (Docket No. 10);
- (g) Appellant's Reply Brief (Docket No. 12);

- (h) Supplemental Brief in Response to January 18, 2008 Supplemental Letter Brief (Docket No. 15);
- (i) Transcript of Court Proceedings of January 8, 2008 (Docket No. 16);
- (j) Letter to Judge Cedarbaum dated January 18, 2008 regarding debtor's counsel's duty to creditors. (not electronically filed);
- (k) Opinion of Judge Miriam Goldman Cedarbaum dated March 19, 2008 (Docket No. 17);
- (l) Judgment dated March 25, 2008 (Docket No. 18); and
- (m) Notice of Appeal dated April 9, 2008 (Docket No. 21).

Dated: New York, New York
April 21, 2008

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